WONG SIEW CHOONG SDN BHD

v.

ANVEST CORPORATION SDN BHD

FEDERAL COURT, PUTRAJAYA
STEVE SHIM CJ (SABAH & SARAWAK)
PAJAN SINGH GILL FCJ
RAHMAH HUSSAIN FCJ
[CIVIL APPEAL NO: 02-5-2003 (W)]
10 SEPTEMBER 2004

CONTRACT: *Sale and purchase of land - Part of land acquired under Land Acquisition Act 1960 - Whether contract frustrated - Whether specific performance available - Specific Relief Act 1950, s. 13*

LAND LAW: *Sale of land - Part of land acquired under Land Acquisition Act 1960 - Whether contract frustrated - Whether specific performance available - Specific Relief Act 1950, s. 13*

LAND LAW: *Sale of land - Part of land acquired under Land Acquisition Act 1960 - Whether acquisition award to be deducted from purchase price of land - Whether vendor still had beneficial ownership in land at time of acquisition - Borneo Housing Mortgage Finance Berhad v. Time Engineering Berhad*

LAND LAW: *Sale of land - Beneficial ownership - When does purchaser acquire beneficial ownership in land - Whether upon the execution of a valid and registered transfer of land to purchaser - Borneo Housing Mortgage Finance Berhad v. Time Engineering Berhad*

The respondent purchaser obtained an order for specific performance of a sale and purchase of land that it had transacted with the appellant vendor. However, before the completion of the contract of sale of the subject land, part of it was acquired under the Land Acquisition Act 1960. The High Court judge held that the respondent was the beneficial owner of the subject land at the time of acquisition and that the acquisition award should be deducted from the purchase price of the subject land. On appeal, the Court of Appeal affirmed the decision of the High Court. In the appellant's appeal to this court, the following question was posed: "Do ss. 12 to 16 of the Specific Relief Act 1950 provide a comprehensive code by way of saving to the consequences of frustration that may otherwise affect a contract in which a portion of the subject matter cease to exist at the time of performance?"

Held (allowing the appeal and answering the question posed before the court in affirmative)

Per Pajan Singh Gill FCJ delivering the judgment of the court:

[1] The decision of the Federal Court in *Borneo Housing Finance Bhd v. Time Engineering Bhd* prevails over all other decisions on the point of when a vendor of land becomes a bare trustee for the purchaser. In the present case, the evidence showed that a duly executed valid and registered transfer of the subject land in favour of the respondent had yet to be executed at the time of acquisition. For this reason, the appellant had not divested itself of the beneficial interest in the subject land at the time of acquisition. Hence, the acquisition award rightfully belonged to the appellant. (p 98 d-g)

[2] The portion acquired was only a small portion of the subject land. Accordingly, the contract of sale of the subject land was not fundamentally altered by the compulsory acquisition of this minor portion of land. Also, as the acquisition had not fundamentally altered the said contract, specific performance should be available. (p 99 a-c)

[3] Sections 12 to 16 of the Specific Relief Act 1950 comprehensively cater for various situations when a supervening event (frustration) arises and the conduct of the parties pertaining to it. For the purposes of the present case, only sections 13 and 14 were of any relevance. However, in view of the respondent's entrenched stand not to relinquish all claims to further performance of the contract of sale of land and all rights to compensation for the deficiency thereof, that brought the respondent out of the scope of s. 14. Accordingly, s. 13 was applicable. Since the sale of the subject land was at RM55 per sq ft, the respondent should pay for the remaining portion of the subject land at the same rate. (pp 99 d-g & 101 c-d)

*[**Bahasa Malaysia** Translation Of Headnotes*

Responden pembeli mendapat satu perintah pelaksanaan spesifik berkaitan jualbeli sebidang tanah yang diuruskannya dengan penjual. Bagaimanapun, sebelum kontrak jualbeli tanah disempurnakan, sebahagian dari tanah tersebut telah diambil di bawah Akta Pengambilan Tanah 1960. Mahkamah Tinggi memutuskan bahawa responden adalah pemilik benefisial tanah tersebut semasa pengambilan dibuat dan bahawa jumlah harga pengambilan hendaklah dipotong daripada harga belian tanah tersebut. Semasa rayuan, Mahkamah Rayuan mengesahkan keputusan Mahkamah Tinggi. Dalam rayuan oleh perayu ke mahkamah ini, persoalan berikut telah dikemukakan, iaitu: "Adakah ss. 12 hingga ke 16 Akta Relif Tertentu 1950 memperuntuk suatu tatahukum yang

komprehensif dengan cara menyelamat akibat-akibat kekecewaan, yang kalau tidak mungkin menjejaskan sesuatu kontrak di mana sebahagian dari perkara pokoknya sudah tidak lagi wujud semasa pelaksanaannya".

Diputuskan (membenarkan rayuan dan menjawab secara afirmatif persoalan yang dikemukakan kepada mahkamah)
Oleh Pajan Singh Gill HMP menyampaikan penghakiman mahkamah:

[1] Keputusan Mahkamah Persekutuan dalam *Borneo Housing Finance Bhd v. Time Engineering Bhd* mengatasi segala keputusan mengenai bilakah seseorang penjual tanah menjadi bare trustee bagi pihak pembeli. Dalam kes semasa, keterangan menunjukkan bahawa sewaktu pengambilan, suatu pindahmilik sah tanah tersebut kepada responden belum disempurnakan dan didaftarkan. Atas alasan ini, perayu tidak melucutkan kepentingan-kepentingan benefisialnya terhadap tanah tersebut semasa pengambilan dibuat. Oleh yang demikian, award pengambilan adalah menjadi hak perayu.

[2] Bahagian yang diambil hanyalah satu bahagian kecil tanah. Pengambilan wajib sebahagian kecil tanah sedemikian tidak mengubah dengan secara fundamental kontrak jualbeli tanah tersebut. Dan, oleh kerana pengambilan tidak dengan secara fundamental mengubah kontrak berkenaan, maka pelaksanaan spesifik adalah wajar.

[3] Seksyen-seksyen 12 hingga 16 Akta Relif Tertentu 1950 mengandungi peruntukan-peruntukan lengkap bagi menghadapi keadaan dan kebangkitan sesuatu peristiwa (kekecewaan) serta kelakuan-kelakuan pihak-pihak berkaitan dengannya. Bagi maksud kes semasa, seksyen-seksyen yang relevan hanyalah ss. 13 dan 14. Namun, mengambilkira pendirian teguh responden untuk tidak melepaskan semua tuntutan pelaksanaan lanjut kontrak jualbeli tanah dan semua hak-haknya kepada pampasan kerana kekurangan-kekurangan yang ada di situ, maka responden telah terkeluar dari skop s. 14. Seksyen 13 dengan itu adalah terpakai. Dengan demikian, oleh kerana penjualan tanah tersebut adalah pada harga RM55 kaki persegi, responden harus membayar untuk baki bahagian tanah tersebut pada kadar yang sama].

Case(s) referred to:
Borneo Housing Mortgage Finance Bhd v. Time Engineering Bhd [1996] 2 CLJ 561 FC ***(foll)***
Dalip Bhagwan Singh v. PP [1997] 4 CLJ 645 FC ***(refd)***
Gujarat Steel Tube Ltd & Ors v. Gujarat Steel Tubes Mazdoor Subha & Ors [1980] 2 SCC 593 ***(refd)***
Karrupiah Chettir v. Subramaniam [1971] 2 MLJ 116 ***(refd)***

Lysaght v. Edwards [1976] 2 Ch D 499 ***(refd)***
Ong Chat Pang & Anor v. Valiappa Chettir [1971] 1 MLJ 224 ***(refd)***
Peninsular Land Development Sdn Bhd v. K Ahmad [1970] 1 MLJ 149 ***(refd)***
R Rama Chandran v. The Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***
Temenggong Securities Ltd & Anor v. Registrar of Titles, Johor & Ors [1974] 2 MLJ 45 ***(refd)***

Legislation referred to:
Specific Relief Act 1950, ss. 12, 13, 14, 15, 16

For the appellant - Logan B Sabapathy (Tharminder Singh & S Bhuvaneswary); M/s Logan Sabapathy & Co
For the respondent - Wong Kim Fatt (Wong Boon Lee); M/s Gulam & Wong

[Appeal from Court of Appeal; Civil Appeal No: W-02-866-1999]

Reported by Usha Thiagarajah

JUDGMENT

Pajan Singh Gill FCJ:
A question was framed for consideration of this court by the appellants on the following issue. "Do ss. 12 to 16 of the Specific Relief Act 1950 provide a comprehensive code by way of saving to the consequences of frustration that may otherwise affect a contract in which a portion of the subject matter cease to exist at the time of performance?"

We answer the question in the affirmative. However, in order to appreciate our reasons for doing so, a brief chronology of events that lead to this poser is pertinent.

The appellants (Wong Siew Choong Sdn Bhd) at all material times were the registered and beneficial owners of a piece of land held under Lot No. 129, Section 44, Town and District of Kuala Lumpur measuring approximately 100,934 square feet hereinafter referred to as (the said land). The appellants agreed to sell the said land to the respondents (Anvest Corporation Sdn Bhd), principals of M/s Appraisal (M) Sdn Bhd, who were the registered real estate agents at the material time.

On 11 October 1988, the respondents' agent Appraisal (M) Sdn Bhd wrote to the appellants to confirm the terms and conditions of the sale of the said land. The appellants confirmed with the respondents to the following terms and conditions:

1. The price is at $55 per sq ft;

2. The property has a freehold title;

3. Able to deliver vacant possession of the said land;

4. 10% (ten percentum) of the price will be paid on the signing of the sales & purchase agreement; and

5. the balance 90% (ninety percentum) to be paid (6) six months after signing of the sale & purchase agreement.

Dispute arose over the transfer of the said land to the respondents culminating in the respondents issuing a writ against the appellants claiming *inter alia*, for specific performance and damages for breach of contract in lieu of or in addition to specific performance.

The learned trial judge hearing the suit, dismissed the suit. The respondents appealed against that decision to the Court of Appeal. The Court of Appeal on 9 December 1997 unanimously held that the said letter was a concluded and binding contract and allowed the respondents' appeal. The court further ordered the matter be remitted to the High Court for specific performance and completion of the contract as embodied in the said letter of 11 October 1988.

The appellants obtained leave to appeal to the Federal Court against the order of the Court of Appeal. On 1 July 1999 the Federal Court unanimously dismissed the appellants' appeal and affirmed the order of the Court of Appeal.

Pursuant to the order of the Federal Court, the respondents made an application to the High Court by way of summons in chambers for specific performance and completion of the contract as agreed by both parties to the agreement.

In its affidavit in support of the application affirmed by Kheoh And Yeng, its director, the respondents, however, deposed that part of the said land had since been acquired under the Land Acquisition Act 1960. Para 5 of the said affidavit states as follows:

> 5. According to the land title search on the said land conducted on behalf of the Plaintiff on 25th March 1998, there is an endorsement of Form K, i.e. Notice that Possession has been taken of land *vide* Presn. No. 292/97 dated 1st August 1997, in respect of 1,200 square metres out of the total area of 9,377 square metres of the whole of the said land. I am advised and verily believe that the compensation awarded by the Land Aministrator in respect of the land 1,220 square metres out the said land should be deposited into Court pending its further direction and completion of the sale and purchase agreement herein. A copy of the said land search report dated 25th March 1998 is annexed hereto and marked as exhibit 'KAY-4'.

The appellants replied by stating that the respondents had no rights or had not acquired rights in relation to the compensation paid for the acquired portion of the said land. The respondents disputed this and filed a further affidavit. In that affidavit it was contended, that since the contract was for the whole area of the said land and that now a portion of it had been acquired, therefore the sum of RM5,252,738.20 being the acquisition award paid to the appellants, should be deducted from the total purchase price of RM5,551,370 which was based on contractual price of RM55 per sq.ft.

The question posed before the High Court Judge was whether the compensation money received by the appellants in the sum of RM5,252,783.20 for the acquisition of 1,220 square meters (13,131 sq,ft) from the said land by the Government should be deducted from the total purchase price of RM5,551,370 calculated at the rate of RM55 for 100,934 sq.ft.

The learned High Court Judge YA Datuk Mohd. Shaari Yusoff (as he then was) held that the acquisition award received by the appellants for the area acquired be deducted from the total purchase price of the said land. The learned judge also held the respondents were the beneficial owners of the said land at the time of the land acquisition. Therefore, the said acquisition award of RM5,252,783.20 belonged to the Respondents and must be deducted from the purchase price. His Lordship's raison *d'ètre* is found in paras. 8 to 12 of his grounds of judgment, and is reproduced for completeness:

> On another aspect, when the defendant sold the said land to the plaintiff, on the defendant accepting unconditionally the terms as embodied in letter (KAY-3) on 14 Oct. 1988, the plaintiff became a trustee for the plaintiff subject to the payment of the balance of purchase price (see *Lysaght v. Edwards* [1876] 2 Ch. D 499 at 506, and *Williams v. Greatrex* [1957] 1 WLR 31 at 36). These two cases were applied by the Federal Court in *Temenggong Securities v. Registrar of Titles* [1972] 2 MLJ 45 FC.
>
> By the defendant failing to honour the agreement as embodied in letter (KAY-3) the effect would be to prevent the plaintiff from completing the contract in paying full purchase price. In the regards, it is noted that time was not of essence of the contract. For this court to hold that the defendant was the beneficial owner of the said land at the time of land acquisition, it would tantamount to allowing the defendant to benefit from its own breach or wrong. (See *Gimstern Corporation (M) Sdn Bhd & Anor v. Global Insurance Co Sdn Bhd* [1987] l MLJ 302). Further there is nothing to suggest that the plaintiff was not able and not willing to complete the contract prior to the date of land acquisition.

For the defendant, it is submitted that the plaintiff is not entitled to the acquisition award. For the proposition, the learned counsel cites the case of *Plews v. Samuel* [1904] 1 Ch. 404 and *Hillingdon Estates v. Stonefiled Estates Ltd* [1952] 1 Ch. 627. With respect, I find nothing in *ratio decidendi* of the two cases which help the defence's case.

In the view of the foregoing, it is my finding that the plaintiff was the beneficial owner of the said land at the time of the land acquisition. Therefore, the said acquisition award of RM5,252,783.20 belonged to the plaintiff and must be deducted from the purchase price.

Completion Account

The completion account of the sale and purchase of the said land should be as follows:

	RM
Total Purchase Price (100,934 sq. ft. at the rate of RM55.00 p.s.f)	5,551,370.00
Less: Acquisition Award	5,252,783.20
Amount Payable to the Defendant	298,586.80

The Court of Appeal in affirming the decision of the trial judge premised its entire judgment in respect of the beneficial ownership of the said land at the material time of the acquisition, on the principles of law laid out in *Lysaght v. Edwards* [1976] 2 Ch. D 499 at p. 566 which was subsequently applied by the Federal Court in *Temenggong Securities Ltd & Anor v. Registrar of Titles, Johor & Ors* [1974] 2 MLJ 45. The judgment of the Court of Appeal is reported in [2002] 3 MLJ 143.

What can be distilled from the decision of *Lysaght v. Edwards (supra)* is that when a valid contract for sale of land had been executed; the vendor becomes in equity a trustee for the purchase of the said land, and the beneficial ownership passes to the purchaser of the land sold.

Viewed against the historical background of the present case, it was, the reasoning of the Court of Appeal, that since it was adjudged that there was a valid and binding contract of sale of land between the respondents and the appellants, it would follow that the appellants as vendors had divested themselves of any interest in the said land, and are bare trustees for the

respondents. By sheer perforce, the Court of Appeal held that the compensation sum received for the acquisition of a portion of the land at the material time by the appellants should pass to the respondents as beneficiaries of the land.

We are, mindful of the fact that the question of when a vendor of land becomes a bare trustee for the purchaser has been a bone of contention within our legal jurisprudence on many an occasion. There had been a welter of authorities from time to time over this issue, and the answer to this pertinent issue had been in a state of flux. "Had" being the operative word, because we believe that the issue was finally put to rest in the case of *Borneo Housing Mortgage Finance Bhd v. Time Engineering Bhd* [1996] 2 CLJ 561 wherein Edgar Joseph Jr FCJ, after revisiting all legal pertinent pronouncements on this issue stated:

> In our view, the contractual events which result in the vendor becoming a bare trustee of the land, the subject matter of the agreement of sale and purchase, for the purchaser, is on completion, that is to say, upon receipt by the vendor of the full purchase price, timeously paid and when the vendor has given the purchaser a duly executed, valid and registrable transfer of the land in due form in favour of the purchaser, for it is then that the vendor divests himself of his interest in the land.

Much wind was expelled by both counsel before us that both *Borneo Housing Mortgage Finance (supra)* and *Temenggong Securities Ltd (supra)* were decisions of the Federal Court. So too for a host of other decisions, *viz-a-viz, Peninsular Land Development Sdn Bhd b K Ahmad* [1970] 1 MLJ 149 FC, *Ong Chat Pang & Anor v. Valiappa Chettir* [1971] 1 MLJ 224 FC and *Karrupiah Chettir v. Subramaniam* [1971] 2 MLJ 116 FC where the question of when the vendor of land becomes a bare trustee for the purchaser may not have been consistently answered by the Apex Court.

Before we deliberate on which is the more preferable judicial approach on the aforesaid issue, we feel it is imperative to address our minds to the doctrine of judicial precedent. In this respect, it would be apposite we find, to quote in extenso the decision of Peh Swee Chin FCJ, in the case of *Dalip Bhagwan Singh v. Public Prosecutor* [1997] 4 CLJ 645 where the doctrine of binding precedent was discussed in his Lordship's customary style:

> The rule of judicial precedent in relation to the House of Lords was stated in *London Tramways v. London Country Council* [1898] AC 375 that it was bound by its own previous decision in the interests of finality and certainty of the law, but a previous decision could be questioned by the House when it conflicted with another decision of the House or when it was made *per incuriam*, and that the correction of error was normally dependent on the legislative process.

However, in 1966, Lord Gardiner LC made the following statement on behalf of himself and all the Lords of Appeal in Ordinary commonly known as the Practice Statement (Judicial Precedent) 1966 which is set out below:

> Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individual can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules.
>
> The Lordship nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law.
>
> They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.
>
> In this connection, they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especially need for certainty as to the criminal law.
>
> This announcement is not intended to affect the use of precedent elsewhere than in this House.

Experience in the United Kingdom has shown that the power 'to depart from a previous decision when it appears right to do so' has been used very sparingly.

In Malaysia, the Federal Court and its forerunner, ie the Supreme Court, after all appeals to the Privy Council were abolished, has never refused to depart from its own decision when it appeared right to do so: see the above-mentioned Federal Court's cases on the question of burden of proof at the close of the prosecution's case.

Though the Practice Statement (Judicial Precedent) 1966, of the House of Lords is not binding at all on us, it has indeed and in practice been followed, though such power to depart from its own previous decision has been exercised sparingly also. It is right that we in the Federal Court should have this power to do so but it is suggested that it should be used very sparingly on the important reason of the consequences of such overruling involved for it cannot be lost on the mind of anybody that a lot of people have regulated their affairs in reliance on a *ratio decidendi* before it is overruled. In certain circumstances, it would be far more prudent to call for legislative intervention. On the other hand, the power to do so depart is indicated (subject to a concurrent consideration of the question of the consequences), when a former decision which is sought to be overruled is wrong, uncertain, unjust or outmoded or obsolete in the modern conditions.

> In this connection, the question of a 'full court' or a panel of Federal Court comprising more than three members as compared with the ordinary constituted coram of three members of the same court, arises for consideration. In view of the reasons about departing from its previous decisions advanced above, the effect or weight of a decision of a 'full court' or a panel larger than the ordinary coram is usually indicated such as when an unusually difficult or controversial question of law is involved, or a question arises as to whether a previous decision of the Federal court ought to be overruled.
>
> If the House of Lords, and by anology, the Federal Court, departs from its previous decision when it is right to do so in the circumstances set out above, then also by necessary implication, its decision represents the present state of the law. **When two decisions of the Federal Court conflict on a point of law, the later decision therefore for the same reasons, prevails over the earlier decision**. (emphasis is ours).

Viewed against this illuminating *dicta*, by necessary implication, it would seem that the decision of the Federal Court in *Borneo Housing Mortgage Finance Bhd (supra)* being a later decision prevails over all other decisions on the point of when a vendor of land becomes a bare trustee for the purchaser.

So much for the doctrine of judicial precedent. We at this juncture, wish now, to put on record that the decision in *Borneo Housing Mortgage Finance Bhd (supra)* is a decision we ourselves are sanguine enough to associate with. It is a decision in consonance with our local landscape of land registration of titles, *viz a viz*, the Torrens System. Any other interpretation we hold, would be repugnant to the system of registration of land titles in our country. The matter is *cadit quaestio.*

Against the backdrop of the case of *Borneo Housing Mortgage Finance Bhd (supra)* the contractual events at hand have to be examined. From the evidence before us we find that a duly executed valid and registerable transfer of the land in favour of the respondents had yet to be performed at the stage of the acquisition of land. For this reason the appellants had not divested themselves of the beneficial interest in the said land at the time of acquisition. Hence the compensation for acquisition rightfully belongs to the appellants.

Compelling arguments were also put forward by both appellants and respondents' counsel before us and in the court below, whether by virtue of the compulsory acquisition of the said land, the contract of sale was frustrated. This present poser is a spin off of that argument.

In this context we are *ad idem* with the rationale of the Court of Appeal, who in the main held that the entire subject matter of the agreement comprised 100,934.29 sq. feet (9377 sq. metres) of which only an area of the 13,131 sq. feet (1200 sq. metres) was acquired by virtue of the land acquisition. The acquired portion was held to be only a small portion (emphasis is ours) of the whole land. We equally find that the contract of sale of land was not fundamentally altered by the compulsory acquisition of this minor portion of the land.

On The Issue Of Specific Performance Of The Agreement

Both counsel for appellants and respondents put forth arguments on whether specific performance could be ordered in respect of the agreement in the light of the said acquisition of land. Our initial views on this matter remains. The said compulsory acquisition had not fundamentally altered the contract of sale, and as such specific performance was proper.

What Next?

The Respondents, we believe show every desire of wanting to proceed with the said contract of sale. Hence, reference was made to the impact of ss. 12 to 16 of the Specific Relief Act 1950. We have scrutinized the relevant sections and are of the view that the sections themselves are comprehensive enough to cater for various situations when a supervening event (frustration) arises and the conduct of the parties in relation of it. For the purposes of the present factual matrix only ss. 13 and 14 are of any relevance.

In the context of s. 14, we find that in view of the the respondents' entrenched stand, not to relinquish all claims to further performance and all rights to compensation to the deficiency, brings them out of the scope of s. 14 of the Specific Relief Act 1950.

That only leaves us with s. 13 of the Specific Relief Act which for clarity reads as follows:

> S. 13. Where a party to a contract is unable to perform the whole of his part of it, but the part which must be left unperformed bears only a small proportion to the whole in value, and admits of compensation in money, the court may, at the suit of either party, direct the specific performance of so much of the contract as can be performed, and award compensation in money for the deficiency.

To recapitulate, it is the respondents' stand that the acquisition award of RM5,252,738 that was received by the appellants ought to be deducted from the original sum agreed upon sale between the appellants and respondents of RM5,550,370, as it was an award due and owing to them as beneficial owners

of the property. As we said a moment ago, the beneficial owners of the land at the material time of the acquisition were the appellants. Thus the acquisition award rightly belongs to them. To expect the appellants to take into account, the acquisition award as against the purchase price would to our minds go against the grain of our initial views of when beneficial ownership passes in a sale of land. The fact that this acquisition award for a minor piece of the land was worth only a little less than the purchase price agreed upon by the parties is really of no consequence to us. Presumably, the acquisition award was adjudged on the current market value of the said area in question. It may appear to many to be an disproportionate sum compared to the agreed price for the sale of the whole land between the appellants and the respondents, but to us it was an unforeseen event. Alas the loss should lie where it falls.

Do We Then Proceed To Determine What Is In Fact A Reasonable Price To Be Paid By The Respondents At This Stage To Complete The Sale

We are of the view that based on the chronology of events and set of facts on record, that this is a fit and proper case wherein our duties should not cease merely in allowing the appeal and remitting the case to the court below to compute the sum to be paid by the respondents to the appellants to complete the sale. The completion sum is basically a simple arithmetical calculation, but it may lead to further prolongation of proceedings if not attended to by us now. This entire episode has been through a tedious and expensive legal process. Justice demands no further delay and expense.

In this respect, it may not be out of place to quote the decision of the Supreme Court of India in *Gujarat Steel Tube Ltd & Ors v. Gujarat Steel Tubes Mazdoor Subha & Ors* [1980] 2 SCC 593 where at p. 653 it stated:

> Law may be guilty of double injustice when it is too late and too costly for it holds out remedial hopes which peter out into our dupes and bleeds the anaemic litigant of his little cash only to tantalize him into a system equal in form but unequal in fact.

For the record, the above quoted judgment was cited with approval by our Federal Court in the case of *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145, wherein Edgar Joseph Jr as Federal Court Judge held as follows:

> I have carefully considered the question whether this Court should remit the case to the Industrial Court to determine the monetary compensation to be paid by the Employer to the Employee, which will, in essence, involve a simple arithmetical calculation but will also lead to unnecessary prolongation

of proceedings involving inevitable delay and increased expenditure, in what has already been a long drawn out litigation with consequent hardship to the Employee who is now getting on in age.

All the material evidence for the purpose of assessing the monetary compensation payable would appear to be before us. Indeed, there was no suggestion to the contrary, by Dr Das, learned counsel for the Employer …

In the very special circumstances of this case, to remit the case to the Industrial Court to assess the monetary compensation payable by the Employer to the Employee would seem to be a certain detachment from reality and, more importantly, it will not answer the needs of justice. We must, therefore, do what the Industrial court should have done.

What Then Would Be Fair Lines In This Case?

The sale of the land involved in the contract was 100,934 sq. feet and the sale price was RM55 per sq. ft. However, 13,131.95 sq. ft was acquired, leaving a balance of 87,802.05 sq. ft. The sale price of this portion of land at RM55 per sq. ft as stated in the contract would amount to RM4,829,112.75. Ergo, the respondents are to pay the sum of RM4,829,112.07 to the appellants for the remaining portion of land sold. We also order interest of 8% p.a. from date of filing of the writ.

Costs to the appellants here and in the court below. Deposit to be refunded to the appellants.

SETTLEMENT OF ORDER PURSUANT TO GROUNDS OF JUDGMENT (10 SEPTEMBER 2004)

On 26 July 2004, we allowed the appellant's appeal. The factual matrix of this case and the orders given is clearly spelt out in the written judgment delivered by this court.

Subsequently at the request of counsel for the respondent, the matter was brought before us by virtue of O. 42 r. 8(4) Rules of the High Court 1980, read with r. 3 of the Rules of the Federal Court 1995 seeking *inter alia*, clarification or settlement of the terms of the judgment.

For ease of reference O. 42 r. 8(4) Rules of the High Court 1980 provides as follows:

> Every judgment or order shall be settled by the Registrar, but in the case of a judgment or order made by a Judge, any party may require the matter in dispute to be referred to the Judge for his determination.

Before us, the main thrust of argument by counsel for the respondent centered on the issue of interest awarded by this court. In short, the respondent argued that interest should not have been awarded for a prolonged period as in this case.

Dr. Wong Kim Fatt, learned counsel for the respondent further contended that the authorities clearly show that the judges have the power and jurisdiction to vary or recall their judgment either by their own motion or on an application of a party in order to do justice between the parties.

However, there is much force in the contention of counsel for the Appellant, Mr. Logan Sabapathy that the respondent is improperly seeking to invite this court to re-hear arguments on the merits of the judgment given by this court on 26 July 2004.

It is pertinent to note that settlement of the terms of judgment pursuant to O. 42 r. 8(4) of the Rules of the High Court 1980 is only available if there is ambiguity in the terms of the judgment. It should not be resorted to re-argue the case on the merits.

As to the issue of interest, this court has taken into account that s. 11 of the Civil Law Act 1956 as interpreted by this apex court in three previous occasions at least (see the cases of *New Zealand Insurance Co Ltd v. Ong Choon Lin* [1992] l MLJ 185, *Lim Eng Kang v. Jaafar bin Mohamed Said* and *Lim Kar Bee v. Abdul Latif bin Ismail*) recognized that it can and should be resorted to, in order to compensate a successful party for delayed payment of a rightful amount as was the case in this appeal.

As to the issue of the power to recall, the cases referred to by counsel for the respondent were all cases recalled at the instance of the court to address the judge's own concern on the propriety or completeness of his order. The cases do not apply to an instance where a party can re-argue on matters already properly dealt with by the court.

Finally, in passing, learned counsel for the respondent alluded to r. 137 of the Federal Court Rules 1995 to convince us that this court has inherent powers to redress a wrong as justice of the case requires. In the first place we do not see any wrong to redress in the present case. Secondly, r. 137 does not empower the court to review, vary or alter the judgment of the court.

Accordingly, we find no merit in the contention of counsel for the respondent to recall and vary the judgment.

As such, we would direct the deputy registrar of this court to approve the draft order without any amendments in accordance with the terms of the judgment of this court.